1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 CENTRAL DISTRICT OF CALIFORNIA 8 9 SERGIO GUTIERREZ, Case No. CV 11-1544 R (JCG) 10 Petitioner, ORDER ADOPTING REPORT AND 11 v. 12 LELAND MCEWEN, Warden, APPEALABILITY 13 Respondent. 14 15 16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the 17 records herein, the Report and Recommendation of the United States Magistrate 18 Judge, and the Objections to the Report and Recommendation. Accordingly, having 19 made a de novo determination of the portions of the Report and Recommendation to 20 which the Objections were directed, the Court concurs with and adopts the findings 21 and conclusions of the Magistrate Judge's Report and Recommendation. 22 Additionally, for the reasons stated in the Report and Recommendation, the 23 Court finds that Petitioner has not shown that jurists of reason would find it 24 debatable whether the Court was correct in its procedural ruling. As a result, a 25

Certificate of Appealability ("COA") is denied. See Slack v. McDaniel, 529 U.S.

grounds, a COA should issue only when a "prisoner shows, at least, that jurists of

473, 484 (2000) (holding that when a court dismisses a petition on procedural

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reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling[]") (emphasis added). IT IS ORDERED THAT: Judgment shall be entered dismissing the action with prejudice. 1. 2. The Clerk shall serve copies of this Order and the Judgment herein on the parties. 3. An Application for Certificate of Appealability is denied. DATED: July 1, 2011. HON. MANUEL L. REAL UNITED STATES DISTRICT JUDGE